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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

American Encore, an Arizona non-profit corporation; Karen Glennon, an Arizona individual; America First Policy Institute, a non-profit corporation,

## Plaintiffs.

V

Adrian Fontes, in his official capacity as Arizona Secretary of State; Kris Mayes, in her official capacity as Arizona Attorney General

## Defendants.

| No. CV-24-01673-PHX-MTL

**DEFENDANTS' MOTION FOR  
STAY OF DISTRICT COURT  
PROCEEDINGS AND  
DEADLINES PENDING APPEAL**

Defendants respectfully request that the Court stay proceedings and deadlines in this matter pending resolution of Defendants' interlocutory appeal regarding the Court's denial of Defendants' abstention motion and grant of a preliminary injunction. That appeal is fully briefed and set for argument before the Ninth Circuit.

To be clear, Defendants do not seek a stay of the Court’s preliminary injunction order—they merely seek to avoid inefficient and (potentially) unnecessary use of public resources by litigating issues in this Court that will very likely be clarified, streamlined, or even resolved as a result of the pending appeal.

## BACKGROUND

Plaintiffs filed their complaint in July 2024. Doc. 1. Plaintiffs subsequently filed two motions seeking a preliminary injunction. Doc. 14 (Count Two); Doc. 26 (Count One). Defendants then filed motions for abstention and to dismiss. Docs. 27, 31, 33. In September 2024, this Court heard oral argument on those motions (Doc. 54), and later issued its written order that denied Defendants' motion to abstain, denied in large part the motions to dismiss, and granted both preliminary injunction motions (Doc. 62). Defendants filed their answer in October 2024. Doc. 63.

Defendants appealed the Court's grant of a preliminary injunction and the denial of their abstention motion. Doc. 65. That interlocutory appeal is now fully briefed and has been set for oral argument on July 15, 2025. Dkt. 034, No. 24-6703 (9th Cir.).

In December 2024, Defendants asked Plaintiffs to stipulate to a stay of district court proceedings until after the publication of the 2025 Elections Procedures Manual, offering in exchange to dismiss their pending appeal of the preliminary injunction. Defendants made that proposal because the 2025 EPM will likely address some, if not all, of Plaintiffs' concerns in this case, and therefore Defendants sought to avoid unnecessary use of taxpayer and judicial resources. Plaintiffs refused.

Nonetheless, in the last six months since Defendants filed their answer, Plaintiffs have not taken any action to prosecute their case in this court. *See generally* Docs. 65-70. On May 1, 2025, Defendants asked Plaintiffs if they would agree to stay proceedings and

1 deadlines in this court pending resolution of the preliminary injunction appeal. Plaintiffs  
2 again refused.

3        Then, at Defendants' prompting and request, counsel for the parties held a Rule  
4 26(f) conference on May 8, 2025, during which the prospect of a stay was discussed, and  
5 Plaintiffs' counsel indicated they would consider the issue. Defendants heard nothing for  
6 a week and followed up on May 16, 2025, indicating that they intended to file a motion to  
7 stay proceedings and deadlines if the parties were unable to reach an agreement. At  
8 Plaintiffs' request, the parties held another meet and confer to discuss a stay on May 19,  
9 2025. Plaintiffs' counsel indicated that Plaintiffs would make a final decision about  
10 whether to stipulate to a stay by the end of the week. On May 23, 2025, Plaintiffs' counsel  
11 indicated that Plaintiffs "are opposed" to Defendants' stay request.

## LEGAL STANDARD

13       “Though the Court retains jurisdiction over the rest of the claims [not subject to an  
14 interlocutory appeal], a stay pending appeal may nevertheless be warranted. ‘A district  
15 court has discretionary power to stay proceedings in its own courts.’” *Johnson v. City of*  
16 *Mesa*, No. CV-19-02827-PHX-JAT, 2022 WL 137619, at \*1 (D. Ariz. Jan. 14, 2022)  
17 (quoting *Lockyer v. Mirant Corp.*, 393 F.3d 1098, 1109 (9th Cir. 2005)); *see also*  
18 *Harrington v. Cracker Barrel Old Country Store Inc.*, 713 F. Supp. 3d 568, 588 (D. Ariz.  
19 2024) (“[T]he power to stay proceedings is incidental to the power inherent in every court  
20 to control the disposition of the cases on its docket with economy of time and effort for  
21 itself, for counsel, and for litigants.” (quoting *Landis v. N. American Co.*, 299 U.S. 248,  
22 254 (1936))).

23 Because Defendants seek a stay of proceedings—not a stay of this Court’s order  
24 or a stay of enforcement of any judgment—*Landis* applies and the test in *Nken v. Holder*,  
25 556 U.S. 418 (2009), for stays of orders is inapplicable. *See Johnson*, 2022 WL 137619  
26 at \*2 n.1 (correctly explaining the difference and citing cases); *see also Sweet v. City of*  
27 *Mesa*, No. CV-17-00152-PHX-GMS, 2022 WL 912561, at \*2-3 (D. Ariz. Mar. 29, 2022)  
28 (“Here, the purpose of a stay would not be to prevent an order of the Court from coming

1 into effect pending appellate resolution, but rather to prevent proceedings in this case  
2 from continuing to trial. Therefore, *Landis* is the appropriate test to determine whether a  
3 stay is warranted.” (discussing *Johnson* and differences between the two tests)).

4       “Judicial discretion in exercising a stay is guided by the *Landis* factors,” which are  
5       “(1) ‘the possible damage which may result from the granting of a stay,’ (2) ‘the hardship  
6       or inequity which a party may suffer [if the case is allowed] to go forward,’ and (3) ‘the  
7       orderly course of justice measured in terms of the simplifying or complicating of issues,  
8       proof, and questions of law which could be expected to result from a stay.’” *Johnson*, 2022  
9       WL 137619 at \*2 (quoting *Lockyer*, 393 F.3d at 1110); *see also Kruglov v. Karlinsey*, No.  
10      CV-22-00325-TUC-JCH (EJM), 2022 WL 17824289, at \*1 (D. Ariz. Dec. 5, 2022) (citing  
11      three *Landis* factors).

## ARGUMENT

13 The *Landis* factors firmly support granting a stay of proceedings pending appeal.

14      I. A stay of proceedings while Defendants' appeal is pending will cause no  
15      damage.

16 A temporary stay of district court proceedings pending resolution of Defendants' 17 interlocutory appeal will cause no damage and will not harm Plaintiffs in any way. 18 Plaintiffs have received full preliminary relief, not only in this Court pursuant to their 19 federal claims, but also in the parallel state court litigation, which includes one of the same 20 plaintiffs, the same counsel, and identical legal theories under state law.

21 In other words, Plaintiffs have two layers of judicial coverage preventing the harms  
22 they purport to fear—one under state law and one under federal law—on top of the initial  
23 disavowal that Defendants have repeatedly offered. Those preliminary injunctions will  
24 remain in place while Defendants’ interlocutory appeal is pending, and potentially for the  
25 full duration of the two cases, and therefore Plaintiffs have no need to rush through  
26 discovery and motion practice in this matter.

27 Plaintiffs have taken almost no action to prosecute their case here for the last six  
28 months. Indeed, Plaintiffs only agreed to hold a Rule 26(f) conference after Defendants

1 notified Plaintiffs that they would seek relief from the Court if Plaintiffs continued to avoid  
2 prosecuting their case; that history, along with the relatively slow pace of Plaintiffs'  
3 communications, underscore the reality that there is no urgency whatsoever.

4 **II. Allowing the case to proceed pending appeal will cause unnecessary hardship  
5 for Defendants and inefficient use of strained public resources.**

6 By contrast, Defendants are public officials with limited resources, a significant  
7 portion of which has already been spent litigating the two parallel cases Plaintiffs and their  
8 counsel brought in this Court and state court. There is little reason to engage in discovery  
9 and motion practice here, when those efforts could be rendered moot or helpfully  
10 streamlined by the Ninth Circuit's decision. At the same time, such inefficiency and likely  
11 duplication will come at a meaningful cost for Defendants and will put an unnecessary  
12 strain on judicial resources.

13 **III. The orderly course of justice supports granting a stay.**

14 The orderly course of justice otherwise supports granting a stay. To start, although  
15 Defendants believe their motions to abstain or dismiss should have been granted,  
16 Defendants have nonetheless answered the complaint, and plainly are not seeking a stay to  
17 delay and avoid that obligation.

18 Further, and importantly, Defendants' appeal of the preliminary injunction raises  
19 purely legal issues regarding Plaintiffs' standing and interpretive theories that could be  
20 case-dispositive here. Awaiting the Ninth Circuit's ruling could entirely moot or otherwise  
21 resolve this case.

22 Under the circumstances here—the preliminary relief already in place, and the  
23 relationship between the interlocutory appeal and the rest of the case—justice and plain  
24 common-sense counsel in favor of staying this Court's proceedings and deadlines to save  
25 judicial and taxpayer resources, rather than continuing to litigate inefficiently and  
26 unnecessarily. *Cf. Johnson*, 2022 WL 137619, at \*3 ("Here, the Court finds that a stay  
27 would be the most efficient and fairest course as there are independent proceedings which  
28 bear upon the case." (cleaned up)).

## CONCLUSION

For these reasons, Defendants respectfully ask the Court to stay all proceedings and deadlines in this matter pending the Ninth Circuit’s resolution of Defendants’ appeal.

RESPECTFULLY SUBMITTED this 27th day of May, 2025.

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